

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed January 5, 2010. Claims 1-3, 8, 10, 16, 21, 23, 24, and 30-38 were pending and rejected in view of cited art. Claims 1 and 30 are amended. Claims 1-3, 8, 10, 16, 21, 23, 24, and 30-38 remain pending in view of the above amendments, with claims 1 and 30 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1-3, 8, 10, 21, 23, 24, 30-33, and 35 under 35 U.S.C. § 103(a) as being unpatentable over European. Patent No. EP861638 (Pinchuk) in view of U.S. Patent No. 5,476,506 (Lunn). Claims 16, 34, and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinchuk in view of Lunn as applied to claims 1 and 30, and further in view of U.S. Patent No. 5,843,116 (Crocker). Applicant respectfully traverses.

Applicant respectfully submits that the independent claims as presented for reconsideration are not anticipated nor made obvious by Pinchuk either singly or in combination with any other reference of record.¹ In particular, Pinchuk discloses a stent-graft that has two objects. First, the stent-graft is designed with a structure so that it is "useful for bridging vessels

¹ Any amendments to claims other than those which are expressly relied upon in overcoming the rejections on art have been made simply to insure consistency in claim language, to correct typographical or grammatical errors, or to correct other errors of a formal, non-substantive nature, but not to otherwise narrow the claims in scope for any reason.

of different diameter" (col. 4, ll. 1-2). Second, the stent-graft is designed to provide "limited radial expandability and limited axial compressibility" (col. 4, ll. 7-8). This is accomplished with "modular endoluminal stent-grafts . . . [that] include at least two different sized stent-grafts which are deployed one within the other" (col. 4, ll. 10-12)(emphasis added). In one embodiment, one stent-graft is described as having "a flared proximal end 102, a flared distal end 104, and a midsection 106", with this stent-graft being "compressed into an introducer (not shown) and delivered to the a point distal of the renal arteries" prior to deployment (col. 6, ll. 6-7 and 36-37). Another stent-graft of Pinchuk is described as having "a flexible reinforcement 105' attached to the midsection 106' which restricts the midsection from ballooning when another (second) stent-graft is expanded inside the midsection" (col. 7, ll. 10-13). Thus, the stent-grafts of Pinchuk are formed with the "at least two" stent-grafts, with one having a flared proximal and distal ends prior to deployment rather during deployment. Further, Pinchuk makes no mention of use of a particularly shaped balloon to create a flared configuration or the portion of limited expandability because there is limited description of balloons contained in Pinchuk.

Thus, Pinchuk clearly does not anticipate or make obvious applicant's claimed stent-catheter (e.g., see claims 1 and 30) which requires, *inter alia*,

- "a single, substantially uniformly cylindrical deformable stent disposed on said expandable balloon" (Claim 1) or "a single, substantially uniformly cylindrical plastically deformable stent including a liquid impermeable cover" (Claim 30); and
- "said balloon being configured and arranged to expand said stent from the substantially uniformly cylindrical configuration to have a first substantially cylindrical fixing portion. . . a first tapering portion . . . a substantially cylindrical middle portion . . . a second tapering portion . . . and a second substantially cylindrical portion . . ." (Claim 1) and "at least portions of the first and second end sections and being deformable from the substantially uniformly cylindrical configuration into a shape complementary to the shape of the single, expandable balloon following expansion of the single, expandable balloon" (Claim 30)

Lunn and Crocker were cited as secondary references. Lunn was cited for the proposition that it discloses "a balloon catheter . . . having a first substantially cylindrical section 48 that tapers inward to a reduced diameter section which then tapers outward to a second substantially cylindrical section" and discloses "a vascular prosthesis having stent fixing portions of a flared construction" (Office Action, p. 3). Reference was made to the "double balloon catheter" of

Lunn to identify the first and second substantially cylindrical sections, the tapering portions and the reduced diameter section. The illustrated and described "double balloon catheter" of Lunn includes has "two expansion balloons" which are inflated and deflated separately during the procedure for placing the graft (col. 4, ln. 64 and col. 5, ln. 1 and see col. 5, ll. 24-58). A double balloon is not a "single expandable balloon", such is claimed in independent claims 1 and 30.

Turning now to Crocker, it was cited for the proposition that it discloses "stiffening elements" (Office Action, p. 4). That said, Crocker does not otherwise add anything in terms of reading on the claimed limitations noted above which clearly define over Pinchuk because Crocker appears to neither teach nor suggest the configuration of the graft used with the disclosed focalized intraluminal balloons, but rather describes generally that "[t]he graft is preferably expanded by the balloon to a first diameter at the treatment site. The proximal and distal end zones of the graft are preferably expanded to a larger diameter so that they are seated against the vessel wall proximally and distally of the vessel wall defect" (col. 26, ll. 27-32). No description is provided of the initial or final overall configuration of the graft.

Accordingly, for at least the reasons noted, independent claims 1 and 30 and the claims depending therefrom² are neither anticipated nor made obvious by Pinchuk, either singly or in combination with any other cited prior art of record, and thus reconsideration and withdrawal of the rejection is respectfully requested.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

² Emphasis herein of the differences between the independent claims and the prior art are equally applicable to the dependent claims 2-3, 8, 10, 16, 21, 23, 24, and 31-38, but this does not mean, on the other hand, that these are necessarily the *only* differences between the claimed invention and the cited prior art of record. Applicants thus do not acquiesce in any asserted rejections of the dependent claims 2-3, 8, 10, 16, 21, 23, 24, and 31-38.

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provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 2nd day of July, 2010.

Respectfully submitted,

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